
CITY OF DURHAM, NORTH CAROLINA

AMENDED AND RESTATED BOND ORDER

**Adopted
May 16, 2011**

***City of Durham, North Carolina
Utility System Revenue Bonds***

AMENDED AND RESTATED BOND ORDER

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AMENDED AND RESTATED BOND ORDER

P R E A M B L E:

WHEREAS, the existing Utility System (as hereinafter defined) currently provides water and sewer services to the residents, businesses and other users located within the jurisdiction of the City and its surrounding areas;

WHEREAS, the City proposes to issue bonds (the “*Bonds*”) under this Bond Order and pursuant to the Act (hereinafter defined) and to apply the proceeds of the Bonds to finance or refinance the costs of extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for the Utility System; and

WHEREAS, the Bonds issued under this Bond Order will be secured by a pledge of the Net Revenues (hereinafter defined) of the Utility System.

ARTICLE I DEFINITIONS OF TERMS, CONSTRUCTION AND CERTAIN GENERAL PROVISIONS

Section 1.1 **Definitions.** In this Bond Order, the following words and terms will, unless the context otherwise requires, have the following meanings:

“*Account*” or “*Fund*” means one of the special funds or accounts created and established pursuant to Section 5.2.

“*Accountant*” means an individual or firm of independent certified public accountants as may be selected by the City and not unacceptable to the Trustee.

“*Accreted Value*” means (1) on a Compounding Date with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at the date of delivery to the original purchasers thereof plus the interest accrued on such Capital Appreciation Bond from such date to that Compounding Date as shown in the Series Resolution under which it is issued, or (2) as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at the date of delivery to the original purchasers thereof plus the interest accrued on such Capital Appreciation Bond from such date to the date of computation, calculated based on the assumption that Accreted Value as shown in the Series Resolution under which it is issued accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each.

“*Act*” means The State and Local Government Revenue Bond Act, General Statutes of North Carolina Section 159-80 *et seq.*, as the same may hereafter be amended.

“*Annual Budget*” means the annual budget approved by the City concerning the operation of the Utility System for each Fiscal Year.

“*Bond*” means one of the obligations delivered pursuant to this Bond Order, including the 1994 Bonds, the 2001 Bonds, the 2005 Bonds, all Series of Bonds issued pursuant to a Series Resolution and the State Loan.

“*Bond Counsel*” means an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal, state and public agency financing, selected by the City and not unacceptable to the Trustee.

“*Bond Order*” means the Amended and Restated Bond Order, amending the Bond Order adopted by the City Council of the City on December 5, 1994, as supplemented or amended in accordance with Article VII.

“*Business Day*” means any day other than (a) a day on which banking institutions in New York, New York, or in the State or in the cities in which the Trustee has its principal offices are authorized to close or (b) a day on which the New York Stock Exchange is closed.

“*Capital Appreciation Bonds*” means any Bonds, however denominated in the related Series Resolution, as to which interest is compounded periodically on each Compounding Date and which are payable in an amount equal to the then-current Accreted Value only at maturity, earlier redemption or other payment date therefor.

“*Certificate*” means (1) a signed document either attesting to or acknowledging the circumstances, representations or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Bond Order or (2) the report of an accountant as to audit or other procedures called for by this Bond Order.

“*City*” means the City of Durham, North Carolina.

“*City Representative*” means the City Manager, the Finance Director, the Deputy Finance Director and, in the case of any act to be performed or duty to be discharged, any other member, officer or employee of the City then authorized to perform such act or discharge such duty.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein will be deemed to include the United States Treasury Regulations in effect with respect thereto.

“*Compounding Date*” means, with respect to any Capital Appreciation Bond, the dates set forth in the Series Resolution under which it is issued.

“*Construction Fund*” means the Fund so designated and established under Section 5.2.

“*Consulting Engineer*” means the City’s professional engineer or a firm of engineers or utilities consultants with recognized expertise for advising governmental entities with respect to the construction, maintenance and use of Utility System from time to time employed by the City and not unacceptable to the Trustee.

“*Costs of Construction*” means the costs reasonably incurred in connection with the Utility System, including but not limited to the costs of (1) acquisition of all property, real or personal, tangible or intangible, and all interests in connection therewith including all rights-of-way and easements therefor, (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith, (3) architectural, engineering, legal, financial advisory and other professional services, (4) premiums for insurance policies taken out and maintained

during construction, to the extent not paid for by a contractor for construction and installation, (5) any taxes, assessments or other charges which become due during construction, (6) expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction, (7) Costs of Issuance, (8) Interest on the Bonds during the construction of any portion of the Utility System, (9) miscellaneous expenses incidental thereto and (10) reimbursements of such Costs of Construction properly incurred prior to the issuance of the Bonds.

“Costs of Issuance” means all items of expense, directly or indirectly payable by or reimbursable to the City, related to the authorization, sale and issuance of Bonds.

“Credit Facility” means a line of credit, letter of credit, standby bond purchase agreement or similar liquidity or credit facility (but excluding a financial guaranty insurance policy) issued by an entity other than the City and established or obtained for a Series of the Bonds.

“Current Expenses” means the current expenses of operation, maintenance and current repair of the Utility System, as calculated in accordance with generally accepted accounting principles except as otherwise provided herein, and includes, without limiting the generality of the foregoing: insurance premiums; any rebate required to be paid to the United States Government; fees and expenses of the Trustee and any Paying Agent; fees and expenses of any entity providing credit support or liquidity for any Series of the Bonds; administrative and engineering expenses of the City relating solely to the Utility System; labor; executive compensation; the cost of materials and supplies used for current operations; and charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred as determined by the City in accordance with generally accepted accounting principles except as otherwise provided herein. *“Current Expenses”* will not include (1) any allowance for depreciation or replacements of capital assets of the Utility System, (2) moneys payable as Interest and as interest on General Obligation Indebtedness, Subordinate Indebtedness or Other Indebtedness, (3) moneys deposited or transferred to the Reserve Fund pursuant to the applicable Series Resolution, (4) any loss from extinguishment of debt or the sale, exchange or other disposition of capital assets, (5) any accrued expenses for other post-retirement benefits not resulting in (i) payments of such benefits to current or future retired employees or (ii) deposits of funds into an irrevocable trust for the purpose of making future payments of such benefits to current or future retired employees and (6) any payment out of the Operating Fund to any other fund of the City to cover indirect administrative expenses only if made at the end of each Fiscal Year after the City has met all other financial obligations imposed by this Bond Order or any Series Resolution.

“Debt Service Fund” means the Fund so designated and established by Section 5.2.

“Derivative Agreement” means an interest rate swap, cap, collar, floor, forward, option, put, call or other similar agreement however denominated, relating to the Bonds.

“Event of Default” means any of the events specified in Section 9.1 together with any other events specified as such in a Series Resolution.

“Federal Securities” means (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged; (b) obligations issued by any agency controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and interest on which is fully guaranteed as full faith and credit obligations of the United States of America (including any securities described in (a) or (b) issued or held in the name of the Trustee in book-entry form on the books of the Department of Treasury of the United States of America), which obligations, in either case, are held in the name of the Trustee and are not subject to redemption or purchase prior to maturity at the option of anyone other than the Owner; (c) any bonds or

other obligations of the State or of any agency, instrumentality or local governmental unit of the State (i) which are not callable prior to maturity or (ii) as to which irrevocable instructions have been given to the trustee or escrow agent of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified, and which are rated by Moody's, if the Bonds are rated by Moody's, and S&P, if the Bonds are rated by S&P within the highest rating category and which are secured as to principal, redemption premium, if any, and interest by a fund consisting only of cash or bonds or other obligations of the character described in clause (a) or (b) hereof which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate; or (d) direct evidences of ownership of proportionate interests in future interest and principal payments on specified obligations described in (a) held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in (a), and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated.

"Finance Officer" means the Finance Director of the City or any successor to his or her functions.

"Financial Consultant" means an independent person or firm with recognized expertise for advising governmental entities with respect to financial forecasting and analysis of governmental water and sewer facilities from time to time employed by the City and not unacceptable to the Trustee.

"Fiscal Year" means a 12-month period commencing on the first day of July of any year, or such other 12-month period adopted as the Fiscal Year of the City.

"Fitch Ratings" means Fitch, Inc., its successors and assigns, and, if such entity for any reason no longer performs the function of a securities rating agency, *"Fitch Ratings"* will refer to any other nationally recognized securities rating agency designated by the Finance Officer of the City by notice to the Trustee, and acceptable to the LGC.

"General Obligation Indebtedness" means (1) general obligation indebtedness incurred by the City which is payable from Net Revenues and the proceeds of which were or are to be used to provide for capital costs of the Utility System and (2) general obligation indebtedness of another governmental unit, the payment on which is assumed by the City in connection with acquisition of assets for the Utility System.

"Independent Insurance Consultant" means a person or firm, appointed by the City and not unacceptable to the Trustee, qualified to survey risks and to recommend insurance coverage for facilities of the type operated by the City and having a favorable reputation for skill and experience in such surveys and such recommendations, which insurance consultant, in the case of an individual, must not be an officer or employee of the City and, in the case of a firm, must not have a partner, director, member, officer or employee who is an officer or employee of the City. The City may appoint the North Carolina League of Municipalities as its Independent Insurance Consultant.

"Interest" means (1) the amount designated as interest on any Bonds and (2) payments due from the City under a Derivative Agreement other than for the termination thereof.

"Interest Payment Date" means any date on which Interest is due and payable in accordance with the terms set forth with respect to each Series of Bond in the related Series Resolution or any other document executed and delivered by the City in accordance with this Bond Order.

“*Investment Securities*” means any legal investments under Section 159-30 of the North Carolina General Statutes, as amended from time to time, or any successor statute.

“*LGC*” means the North Carolina Local Government Commission or any successor to its functions under the laws of the State or its designated representative.

“*Moody’s*” means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, “*Moody’s*” will be deemed to refer to any other nationally recognized rating agency designated by the Finance Officer of the City by notice to the Trustee, and acceptable to the LGC.

“*Net Revenues*” means the excess of Revenues over Current Expenses.

“*1994 Bonds*” means the City’s \$15,830,000 Water and Sewer Utility System Revenues Bonds, Series 1994, of which \$5,300,000 is currently outstanding.

“*Other Indebtedness*” means capital leases, installment financing agreements or other contracts used to provide capital improvements to the Utility System.

“*Outstanding*” means all Bonds which have been authenticated and delivered by the Trustee under this Bond Order, except:

(a) Bonds canceled after purchase in the open market or because of payment (it being understood that a payment to an Owner of the purchase price of a Bond, as prescribed in the related Series Resolution, is not payment of a Bond) at or redemption prior to maturity or on acceleration;

(b) Bonds deemed paid under Article X;

(c) Bonds for the payment of the Principal of, redemption premium, if any, and interest on which Federal Securities have been irrevocably set aside; and

(d) Bonds in lieu of which other Bonds have been authenticated under Article III.

“*Owner*” means any person in whose name any Outstanding Bond is registered on the books of the Trustee.

“*Paying Agent*” means any entity appointed in a Series Resolution to act as a paying agent for a Series of Bonds.

“*Person*” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“*Principal*” means the principal amount of an Outstanding Bond (including as to Capital Appreciation Bonds, the Accreted Value thereof except with respect to the order of priority of payment of Bonds after an event of default under Section 9.1, in which case, “*Principal*” means the principal amount of such Capital Appreciation Bonds on their date of delivery and the balance of the Accreted Value will be “*Interest*”) payable as a Sinking Fund Payment or at maturity.

“*Principal and Interest Requirements on the Bonds*” means, with respect to any particular Fiscal Year, an amount equal to the sum of (i) all interest payable on the Outstanding Bonds during such Fiscal Year less any (a) capitalized interest payable from the proceeds of a Series of the Bonds and (b) interest rate subsidy receivable by the City from the United States Treasury, plus (ii) any Principal Installments of the Outstanding Bonds during such Fiscal Year.

(a) For purposes of computing “*Principal and Interest Requirements on the Bonds*,” the rate of interest used to determine (i) above will be a rate per annum equal to (1) with respect to Bonds which bear interest at a fixed rate, the rate of interest borne or to be borne by such Bonds after taking into account the exclusions in (i) above, and (2) with respect to Bonds which bear interest at a variable or periodically determined rate of interest, the rate which is equal to the greater of (A) the average of all the interest rates in effect on the Bonds (or, as certified by a financial institution or investment banking firm acceptable to the Finance Officer, which would have been in effect on the Bonds had such Bonds been Outstanding) during the immediately preceding twelve-month period or (B) the average of all the interest rates in effect on the Bonds (or, as certified by a financial institution or investment banking firm acceptable to the Finance Officer, which would have been in effect on the Bonds had such Bonds been Outstanding) during the immediately preceding one-month period, each after taking into account the exclusions in (i) above. If the City has entered into a Derivative Agreement under which it will receive payments calculated on a notional amount equal to all or a portion of the aggregate Principal amount of a Series of the Bonds and will make payments calculated on the same notional amount, the interest used to calculate (i) above will be the amount to be paid by the City; otherwise, payments calculated on a variable or periodically determined basis under such an agreement will be calculated in accordance with clause (2) above.

(b) For purposes of computing “*Principal and Interest Requirements on the Bonds*,” the Principal Installments for each Series of Bonds used to determine (ii) above will be the actual planned Principal Installments, except as follows:

(1) for a Series of Bonds, the Principal Installments of which are payable in consecutive annual periods and the Principal Installment for one Fiscal Year of which is at least 10% but not more than 25% of the original principal amount of the Series of Bonds, the Principal Installment for any Fiscal Year in which no Principal is due will be assumed to be the largest required annual Principal Installment with respect to the Series of Bonds multiplied by a fraction whose numerator is the number of Fiscal Years the Series of Bonds has been Outstanding and whose denominator is the number of Fiscal Years after issuance of the Series of Bonds in which no Principal is due;

(2) for a Series of Bonds, 25% or more of the Principal Installments of which are payable in a single Fiscal Year, the Principal Installment in any Fiscal Year will be assumed to be the result derived by dividing (A) the outstanding aggregate Principal amount of such Series of Bonds by (B) the number of full years in the remaining term of such Series of Bonds, but if the date of calculation is within 12 months of the final maturity date of such Series of Bonds and a binding commitment by an institutional lender or municipal underwriting firm exists to provide moneys to refinance the aggregate Principal of such Series of Bonds then Outstanding, then the payment terms contained in the commitment are to be used for purposes of calculating Principal for such Series of Bonds; and

(3) for a Series of Bonds issued as notes or other obligations with a term of less than two years which are issued in anticipation of the issuance of a Series of Bonds (“*Take Out Obligations*”), the Principal Installment in any Fiscal Year will be assumed

to be the result derived by dividing (A) the outstanding principal amount of such notes or other obligations by (B) the number of full years expected to be in the term of the Take Out Obligation as certified to the Trustee by the Finance Officer.

“Principal and Interest Requirements for General Obligation Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of (1) all interest payable on the General Obligation Indebtedness during such Fiscal Year excluding any capitalized interest payable from the proceeds of General Obligation Indebtedness, plus (2) any principal of the General Obligation Indebtedness payable during such Fiscal Year. Principal and interest for purposes of this definition will be computed in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of *“Principal and Interest Requirements on the Bonds.”*

“Principal and Interest Requirements for Other Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of all payment obligations with respect to Other Indebtedness during such Fiscal Year excluding any capitalized interest payable from the proceeds of Other Indebtedness. If the payment obligation under any Other Indebtedness is stated in terms of principal and interest, such principal and interest will be computed for purposes of this definition in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of *“Principal and Interest Requirements on the Bonds.”*

“Principal and Interest Requirements for Subordinate Indebtedness” means, with respect to any particular Fiscal Year, an amount equal to the sum of (1) all interest payable on Subordinate Indebtedness during such Fiscal Year excluding any capitalized interest payable from the proceeds of Subordinate Indebtedness, plus (2) any principal of Subordinate Indebtedness payable during such Fiscal Year. Principal and interest for purposes of this definition will be computed in the manner in which the Principal Installments and interest on the Bonds is calculated under the definition of *“Principal and Interest Requirements on the Bonds.”*

“Principal Installment” means, as of any date of calculation, (1) the aggregate Principal amount of Outstanding Bonds (including as to Capital Appreciation Bonds, the Accreted Value thereof) due on a certain future date, reduced by the aggregate Principal amount of such Bonds which would be retired by reason of the payment when due and application in accordance with this Bond Order of Sinking Fund Payments payable before such future date, plus (2) any Sinking Fund Payments due on such certain future date, together with the aggregate amount of the premiums, if any, applicable on such Sinking Fund Payments.

“Principal Payment Date” means any date upon which Principal is due and payable.

“Qualified Reserve Fund Substitute” means a reserve fund insurance policy, surety bond, letter of credit or similar instrument issued by either a bond insurer or other entity that regularly issues such instruments, in either case having a long-term rating in one of the two highest rating categories (without regard to gradation within category) by Moody’s or S&P as of the date of issuance of such reserve fund insurance policy, surety bond, letter of credit or similar instrument, as so designated in a Series Resolution with respect to each Series of Bonds.

“Rate Covenant” means the City’s covenant under Section 6.6.

“Redemption Price” means, with respect to any Bond, the Principal amount thereof plus the applicable premium, if any, and accrued interest payable on the redemption thereof.

“Reserve Fund” means the Fund so designated and established pursuant to Section 5.2.

“Reserve Requirement” means, as of any date of calculation, the collective amount required to be on deposit in the Reserve Fund as determined by the Series Resolutions under which all Series of Bonds secured by an account in the Reserve Fund are issued.

“Revenues” means all rates, fees (including any tap, monitoring or connection fees), rentals, assessments, capacity fees, impact fees (unless a Certificate of a City Representative filed with the Trustee states that, pursuant to a resolution adopted by the City Council, such assessments, capacity fees or impact fees are not to be Revenues because the proceeds thereof are to be utilized exclusively for the payment of the cost of the capital projects for which they were collected) or other charges or other money received by the City in connection with the ownership, management and operation of the Utility System, and all parts thereof, including amounts received from the investment of money in any Fund or Account (but not including amounts received from interest or other investment income earned in the Construction Fund and, during the construction period, the Reserve Fund), all as calculated in accordance with generally accepted accounting principles, but shall not include (1) net proceeds of insurance or condemnation awards or other extraordinary items, (2) any amounts collected by the City representing sales or use taxes which may be required by law or agreement to be paid to the State or a governmental unit thereof, (3) refundable deposits made by customers of the Utility System, (4) any interest rate subsidy received by the City from the United States Treasury, (5) any proceeds or any gain or loss from extinguishment of debt or the sale, exchange or other disposition of capital assets, or (6) any amounts otherwise included under this definition as Revenues but not permitted by law to be pledged hereunder.

“S&P” means Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, *“S&P”* will be deemed to refer to any other nationally recognized securities rating agency designated by the Finance Officer of the City by notice to the Trustee, and acceptable to the LGC.

“Series of Bonds” or *“Series”* means any series of Bonds issued hereunder pursuant to a Series Resolution.

“Series Resolution” means a resolution supplementing this Bond Order, adopted by the City Council of the City and effective in accordance with Article VII, providing for the issuance of a Series of Bonds.

“Sinking Fund Payment” means, as of any particular date of calculation, the amount required to be paid by the City on a certain future date for the retirement of Outstanding Bonds which mature after said future date, but does not include any amount payable by the City by reason of the maturity of a Bond or by call for redemption at the election of the City.

“State” means the State of North Carolina.

“State Loan” means the City’s obligation pursuant to a Promissory Note executed as of June 10, 1992 and given by the Department of Environment, Health and Natural Resources of the State for a loan made to the City for Project No. E-SRF-T-89-0007 constituting a part of the Utility System.

“Subordinate Indebtedness” means debt, other than General Obligation Indebtedness, the payment of the principal and interest on which is secured by a lien on Net Revenues that is subordinate to the lien on Net Revenues securing the payment of the Principal of and interest on the Bonds.

“Supplemental Resolution” means a resolution supplementing this Bond Order, adopted by the City Council of the City and effective in accordance with Article VII, amending or supplementing this Bond Order.

“*Surplus*” means the amount included on the City’s Unrestricted Net Assets for the Water and Sewer Fund as provided in the City’s audited financial statements for any Fiscal Year.

“*Trustee*” means the Trustee with respect to the Bonds and any other person at any time substituted in its place as provided in Article VIII.

“*2001 Bonds*” means the City’s \$22,000,000 Water and Sewer Utility System Revenues Bonds, Series 2001, of which \$4,400,000 is currently outstanding.

“*2005 Bonds*” means the City’s \$18,605,000 Water and Sewer Utility System Refunding Revenues Bonds, Series 2005, of which \$18,230,000 is currently outstanding.

“*Utility System*” means the City’s water and wastewater system, providing water and sewer services inside and outside the jurisdiction of the City, including any and all additions, modifications, replacements and parts thereof and including any portion thereof owned by a public authority or agency or a nonprofit corporation organized solely for the purpose of assisting the City.

Section 1.2 ***Interpretation.*** In this Bond Order, unless the context otherwise requires:

(a) the terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms used in this Bond Order refer to this Bond Order, and the term “heretofore” means before, and the term “hereafter” means after the date of adoption of this Bond Order;

(b) the words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa;

(c) any references to Section and Article numbers refer to the Section and Article numbers contained herein unless the context clearly indicates otherwise;

(d) any references herein to obsolete accounting terminology shall be read to apply to the terminology currently applied under general accepted accounting principles.

[END OF ARTICLE I]

ARTICLE II TERMS OF BONDS

Section 2.1 ***Bond Order to Constitute Contract; Parity Bonds.*** In consideration of the purchase and acceptance of the Bonds by those who hold the same from time to time, the provisions of this Bond Order will be a part of the contract of the City with the Owners of Bonds and is deemed to be and constitutes a contract among the City and the Owners from time to time of the Bonds. The pledges and assignments made hereby and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the City are for the equal benefit, protection and security of the Owners of any and all the Bonds, each of which, regardless of the time or times of its issue or maturity, will be of equal rank without preference, priority or distinction over any other thereof except as expressly provided in this Bond Order.

Section 2.2 ***Special Obligations.*** The Bonds are special obligations of the City. The Principal of, premium, if any, and Interest on the Bonds are not payable from the general funds of the City, nor do they constitute a legal or equitable pledge, charge, lien or encumbrance on any of its property or on any of its income, receipts or revenues, except the Net Revenues pledged hereunder. Neither the credit nor the taxing power of the City are pledged for the payment of the Principal of the Bonds or Interest, and no Owner has the right to compel the exercise of the taxing power by the City or the forfeiture of any of its property in connection with any default on the Bonds.

Section 2.3 ***Authorization of Bonds.*** In order to provide sufficient funds to construct any expansion or improvement of the Utility System, to acquire property in connection therewith or to refund all or any principal amount of obligations issued therefor hereunder, Bonds of the City are hereby authorized to be issued hereunder, in one or more Series, pursuant to a Series Resolution, in accordance with the laws of the State.

Section 2.4 ***Conditions Precedent to Delivery of Bonds.*** The Bonds of each Series will be delivered upon the receipt by the Trustee of:

(a) certified copies of this Bond Order and the Series Resolution authorizing the Series of Bonds being issued;

(b) a Bond Counsel's opinion to the effect that (1) such Series Resolution has been duly and lawfully adopted and is in full force and effect; (2) this Bond Order has been duly and lawfully adopted by the City and is valid and binding on, and enforceable against, the City (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (3) this Bond Order creates the valid pledge which it purports to create of the Net Revenues for the purposes and on the conditions permitted by this Bond Order; and (4) on the execution and delivery thereof, such Series of Bonds has been duly and validly authorized and issued in accordance with this Bond Order;

(c) a request and authorization to the Trustee on behalf of the City to authenticate and deliver the Series of Bonds to the purchasers therein identified on payment to the Trustee or otherwise as directed by the Trustee, for the account of the City, of a sum specified in such request and authorization;

(d) a written certificate from the City as to the amount of proceeds of the Series of Bonds being issued to be deposited into the various Funds specified in, and pursuant to, the related Series Resolution;

(e) evidence reasonably satisfactory to the Trustee that the Reserve Fund is equal to the Reserve Requirement, if any, after issuance of such Series of Bonds;

(f) a certificate stating that there has been no material adverse change in the general affairs, financial position, results of operations or condition, financial or otherwise, of the City and the City has not incurred liabilities that would materially affect the ability of the City to discharge its obligations under this Bond Order or the applicable Series Resolution;

(g) such additional documents and certificates as Bond Counsel or the Trustee may reasonably require; and

(h) for a Series of Bonds which bear interest at a variable or periodically determined rate of interest, receipt by the Trustee of a Credit Facility for such Series of the Bonds.

[END OF ARTICLE II]

ARTICLE III GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.1 ***Provisions of a Series of Bonds.*** Each Series Resolution will include provisions concerning the medium and times of payment, denominations, forms, dates, redemption, purchase, registration, exchange, transfer, replacement, cancellation and execution of such Bonds.

Section 3.2 ***Legends.*** The Bonds of each Series may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Bond Order as may be necessary or desirable to comply with custom, or otherwise.

Section 3.3 ***Books for Registration.*** Unless otherwise provided in a Series Resolution with respect to the related Series of the Bonds, so long as any Bonds are Outstanding, the City will cause to be maintained and kept, at a corporate trust office of the Trustee, books for the registration of Bonds. On presentation thereof for such purpose at said office by the Owner thereof or his duly authorized attorney, the Trustee will register, or cause to be registered in such books, any Bonds entitled to registration, under such reasonable regulations as the Trustee may prescribe.

Section 3.4 ***Transfer and Exchange of Bonds.*** Ownership of Bonds will be transferable only on the books of the Trustee, on surrender of the Bonds to be transferred with a written instrument of transfer satisfactory to the Trustee, duly executed by the Owner thereof or his duly authorized attorney. Bonds may be exchanged for Bonds of the same Series and maturity in other authorized denominations, on surrender of the Bonds to be exchanged to the Trustee with a written instrument requesting such exchange, duly executed by the Owner thereof or his duly authorized attorney.

When the privilege of transferring or exchanging Bonds is exercised, the City will execute or cause to be executed and the Trustee will authenticate and deliver Bonds in exchange for Bonds being transferred or exchanged. For every such transfer or exchange of Bonds, whether temporary or definitive, the City or the Trustee may charge an amount sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

Section 3.5 ***Replacement of Mutilated, Destroyed, Stolen or Lost Bonds.*** If a Bond is mutilated, destroyed, stolen or lost, the City will execute or cause to be executed and the Trustee will authenticate and deliver replacement Bonds of the same Series and maturity. For any mutilated Bonds, such new Bonds will be delivered only on surrender and cancellation of the mutilated Bonds. For destroyed, stolen or lost Bonds, such new Bonds will be delivered only on the filing with the Trustee of evidence satisfactory to establish to the City and the Trustee that such Bonds have been destroyed, stolen or lost and to prove the ownership thereof and on furnishing the City and the Trustee with indemnity satisfactory to them. The person requesting the delivery of new Bonds pursuant to this Section must comply with such other reasonable regulations as the City and the Trustee prescribe and pay such expenses as the City and the Trustee incur in connection therewith.

Section 3.6 ***Cancellation and Destruction of Bonds.*** All Bonds paid or redeemed, either at or before maturity and all Bonds delivered for transfer or exchange as provided in Section 3.4 must be delivered to the Trustee when such payment or redemption is made. The Trustee will promptly cancel such Bonds, together with all Bonds surrendered for replacement pursuant to Section 3.5 and any other Bonds delivered to the Trustee with instructions to cancel the same. Bonds so canceled may at any time be cremated or otherwise destroyed by the Trustee. Upon the cremation or destruction of canceled Bonds, the Trustee will provide to the City a written certification thereof.

Section 3.7 ***Execution and Authentication.*** The Bonds will be executed on behalf of the City with the manual or facsimile signature of its Mayor or City Manager and will have impressed or imprinted thereon, by facsimile or otherwise, the official seal of the City and will be attested with the manual or facsimile signature of the City Clerk. If any officer of the City whose signature or whose facsimile signature appears on the Bonds ceases to be such officer before the delivery of such Bonds, such signature or facsimile signature will nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery. In addition, each Bond shall be authenticated by the manual or facsimile signature of an authorized officer of the Trustee. If any official of the Trustee whose signature appears on the Bonds ceases to be such official before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit hereunder unless and until executed and authenticated in the manner prescribed by this Section, and such execution and authentication of any Bond shall be conclusive evidence that such Bond has been properly executed and delivered hereunder.

Section 3.8 ***Ownership of Bonds.*** The City and the Trustee may deem and treat the Owner of any Bond as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the Principal of and interest on such Bond and for all other purposes, and all such payments so made to any such Owner will be valid and effectual to satisfy and discharge the liability on such Bond to the extent of the sum or sums so paid, and neither the City nor the Trustee will be affected by any notice to the contrary.

Section 3.9 ***Temporary Bonds.*** Pending the preparation of definitive Bonds of any Series, the City may execute and the Trustee will authenticate and deliver temporary Bonds of such Series. Temporary Bonds will be issuable as fully registered Bonds, of any denomination permitted by the related Series Resolution, and substantially in the form of the definitive Bonds of such Series but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the City. Every temporary Bond will be executed by the City and authenticated by the Trustee on the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the City will execute and will furnish definitive Bonds and then temporary Bonds may be surrendered in exchange therefor without charge at the principal corporate trust office of the Trustee, and the Trustee will authenticate and deliver in exchange for such temporary Bonds a like aggregate Principal amount of definitive Bonds. Until so exchanged, the temporary Bonds will be entitled to the same benefits under this Bond Order as definitive Bonds.

[END OF ARTICLE III]

ARTICLE IV
APPLICATION OF BOND PROCEEDS

Section 4.1 ***Application of Bond Proceeds.*** The proceeds of sale of any Series of Bonds will, as soon as practicable on the delivery of the Series of Bonds by the Trustee pursuant to Section 2.4, be applied as set forth in the applicable Series Resolution.

Section 4.2 ***Bonds Not Delivered for Payment.*** If any Bond is not presented for payment when the Principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, or if any interest check is not cashed, if funds sufficient to pay such Bond have been made available by the City to the Trustee for the benefit of the Owner thereof, all liability of the City to the Owner thereof for the payment of such Bond will forthwith cease, terminate and be completely discharged, and it will then be the duty of the Trustee to hold such funds in trust, uninvested and without liability for interest thereon, for the benefit of the Owner of such Bond who will thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Order or on, or with respect to, said Bond. Any money that is so set aside or transferred and that remains unclaimed by the Owners for a period of five years after such payment has become due and payable will be treated as abandoned property under Chapter 116B of the N.C.G.S., and the Trustee will report and remit this property to the Escheat Fund according to the requirements of Chapter 116B of the N.C.G.S. Thereafter, the Owners may look only to the Escheat Fund for payment and then only to the extent of the amounts so received without any interest thereon, and the City and the Trustee will have no responsibility with respect to such money.

[END OF ARTICLE IV]

ARTICLE V
PLEDGE OF BOND ORDER; FUNDS
AND ACCOUNTS; INVESTMENTS

Section 5.1 ***Pledge Effected by Bond Order.*** The Net Revenues and all money on deposit in funds and accounts created herein are hereby pledged for the benefit of Owners, and the City hereby grants a security interest therein to the Trustee, for the benefit of the Owners, to secure the payment of Bonds in accordance with their terms and the provisions of this Bond Order. The Net Revenues and all money on deposit in funds and accounts created herein will immediately be subject to the lien of such pledge without any physical delivery thereof or further act and such lien will be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice hereof.

Section 5.2 ***Funds and Accounts.***

(a) The City hereby establishes and creates the following special Funds which for administrative convenience may be subdivided by the City Representative or the Trustee into Accounts with appropriate identification:

- (1) Operating Fund;
- (2) Debt Service Fund;
- (3) Construction Fund; and
- (4) Reserve Fund.

The Trustee or the City may also create such other Funds or Accounts as it deems necessary or desirable in the administration of this Bond Order.

(b) The Debt Service Fund, the Construction Fund and the Reserve Fund will be held by the Trustee. If the Reserve Fund is used for a Series of Bonds, the related Series Resolution must establish the provisions for the use thereof. The City will not file a Qualified Reserve Fund Substitute with the Trustee, without the approval of the LGC or a person designated by the LGC to approve a Qualified Reserve Fund Substitute. The Operating Fund will be held by one or more financial institutions from time to time determined by the City.

Section 5.3 ***Operating Fund.***

(a) The City will promptly cause all Revenues to be deposited in the Operating Fund as received. There will also be deposited in the Operating Fund any other amounts required to be deposited therein pursuant to this Bond Order or any Supplemental Resolution and any other amounts available therefor and determined by the City to be deposited therein. All amounts collected by the City as (1) sales and use taxes and (2) refundable deposits made by customers of the Utility System, which have been deposited in the Operating Fund, may be paid out of the Operating Fund in the amounts and at the times determined by the City Representative.

(b) Except as provided in subsections (a) and (c) of this Section, the City will cause disbursements to be made from the Operating Fund as follows:

FIRST: Pay Current Expenses;

SECOND: On or before the 10th day before each Interest Payment Date, to the Trustee for deposit in the Debt Service Fund, an amount such that (after taking into consideration amounts then on deposit in the Debt Service Fund allocated to pay interest due with respect to the Bonds), there will be in the Debt Service Fund an amount equal to the Interest due on the next Interest Payment Date;

THIRD: On or before the 10th day before a Principal Payment Date, and subject to modification with respect to any Series of Bonds by the Series Resolution relating thereto, to the Trustee for deposit in the Debt Service Fund, an amount such that (after taking into consideration amounts then on deposit in the Debt Service Fund allocated to pay the Principal Installment due with respect to the Bonds), there will be in the Debt Service Fund an amount equal to the Principal Installment due on the next succeeding Principal Payment Date;

FOURTH: At any time as may be required, to the paying agent or directly to the registered owners of General Obligation Indebtedness in an amount necessary to pay when due the principal of, premium, if any, and interest on the General Obligation Indebtedness;

FIFTH: At any time as may be required, to the provider of any Qualified Reserve Fund Substitute in satisfaction of the then current obligations of the City incurred in connection therewith;

SIXTH: At any time as may be required, for deposit in the Reserve Fund (1) the amount necessary for the balance therein to equal the Reserve Requirement, but if the Revenues are insufficient therefor, to each Account of the Reserve Fund *pro rata* on the basis of the Reserve Requirement for each Series of Bonds secured by an Account of the Reserve Fund or (2) if the Reserve Fund is less than 90% of the Reserve Requirement as a result of a valuation of investments therein, the amount necessary for the balance therein to equal the Reserve Requirement; but under either clause (1) or (2), the City is not required to transfer in any month more than an amount such that if the same amount were deposited in equal monthly installments over the subsequent 11 months, the Reserve Fund would equal the Reserve Requirement;

SEVENTH: At any time as may be required, to the Persons entitled to payment of any principal, premium, if any, or interest on any Subordinate Indebtedness, an amount equal to the principal, premium or interest then due and owing;

EIGHTH: At any time as may be required, to the Persons entitled to payment with respect to any Other Indebtedness, an amount equal to the payment then due and owing;

NINTH: At any time as may be required, to the Debt Service Fund, the amount necessary to make up any deficiency therein in accordance with the priorities established in Section 5.4;

TENTH: At any time as may be required, to pay expenditures for capital projects as shown in the City's Capital Improvements Project Ordinance so long as such expenditures in aggregate in each Fiscal Year do not exceed the Surplus as of the end of the prior Fiscal Year;

ELEVENTH: At the end of any Fiscal Year, a payment to any other fund of the City as may be necessary to cover indirect administrative expenses.

(c) The City, except during the continuation of an Event of Default, may transfer in any month any balance remaining in the Operating Fund at the end of the preceding month after making all deposits or payments required by (b) above, in whole or in part, to any fund or account not created by the Bond Order, provided that (i) a City Representative will make a finding in writing that, in his or her opinion, the transfer of such amount will not have a material adverse effect on the City's ability over the next 12 months to pay the Current Expenses, to make all deposits required by (b) above and to meet all other financial obligations imposed by this Bond Order or any Series Resolution and (ii) the cumulative amount so transferred in any Fiscal Year does not exceed the total amount budgeted to be transferred from the Operating Fund in such Fiscal Year as shown in the Annual Budget for such Fiscal Year.

Money transferred from the Operating Fund in accordance with this (c) is no longer subject to the pledge, charge and lien on Net Revenues created by this Bond Order.

Section 5.4 ***Debt Service Fund.***

(a) There will be deposited in the Debt Service Fund any amounts required to be deposited therein pursuant to this Bond Order and any other amount available therefor and determined by the City to be deposited therein.

(b) The Trustee will disburse amounts deposited in the Debt Service Fund as follows:

(1) On each Interest Payment Date, to the Persons entitled thereto, Interest due on such date.

(2) Subject to the provisions hereof requiring the application thereof to the payment or redemption of any particular Bond, on each Principal Payment Date, to the Owners, the amounts required for the payment of the Principal due on such date.

(3) On each Redemption Date, to the Owners, the amount required for redemption of Bonds called for redemption.

(4) If on an Interest Payment Date or a Principal Payment Date, the amounts in the Debt Service Fund are insufficient to pay in full the Interest or Principal, the amounts in the Debt Service Fund will be applied *pro rata* first to the Persons entitled to Interest and then to the Persons entitled to Principal. Except as otherwise specifically provided herein or in any Series Resolution, the Trustee has no obligation to purchase or attempt to purchase Bonds at a price below the Redemption Price, the Principal amount or at any other price, and any arms' length purchase by the Trustee will conclusively be deemed fair and reasonable.

(c) If on any Interest Payment Date or Principal Payment Date, there is a deficiency in the Debt Service Fund, the amount of such deficiency will be made up from the following Funds and in the order or priority set forth below:

(1) Operating Fund;

(2) the Account of the Reserve Fund securing a Series of Bonds to pay the Principal of and interest on such Series of the Bonds, to the extent such deficiency is attributable to the Series of the Bonds secured by that Account of the Reserve Fund; and

(3) Construction Fund.

(d) To the extent moneys are required to be transferred from any Fund held by the City to make up a deficiency in the Debt Service Fund as required by subparagraph (c), the Trustee shall notify the City by telephone promptly confirmed in writing on the Business Day preceding the date on which moneys are required to be transferred by it pursuant to this subparagraph and thereafter the City shall cause the required transfer to be made on the date set therefor.

Section 5.5. **Reserve Fund.** There will be deposited in the Reserve Fund any amounts required to be deposited therein pursuant to this Bond Order and any other amount available therefor and determined by the City to be deposited therein. The Trustee will transfer amounts held in an Account of the Reserve Fund to the Debt Service Fund to make up any deficiency therein with respect to the Series of the Bonds secured by that Account, in accordance with the priority set forth in Section 5.4; but if a Qualified Reserve Fund Substitute is in place, the Trustee will not less than 10 days before the need therefor cause appropriate notice to be given to the provider of such Qualified Reserve Fund Substitute of the need for funds to make up any deficiency in the Reserve Fund. If there is more than one Qualified Reserve Fund Substitute in the Parity Account of the Reserve Fund, such Qualified Reserve Fund Substitutes will be drawn on a *pro rata* basis.

Section 5.6. **Construction Fund.** There will be deposited from time to time in the Construction Fund all amounts required to be deposited therein pursuant to, and expended in accordance with, any Series Resolution and any other amounts available therefor and determined by the City to be deposited therein. If a requisition from the Construction Fund contains any item for the payment of the purchase price or cost of any land, property, property rights, rights-of-way, easements, franchises, or interests in or relating to land, other than land, property rights, rights-of-way, easements, franchises or interests already constituting a part of the Utility System, the City must attach to its requisition therefor, in addition to any item required by a Series Resolution:

(a) a Certificate of a City Representative stating that the City is acquiring such land, property, property rights, rights-of-way, easements, franchises or interests in furtherance of the construction or acquisition of a capital project for the Utility System; and

(b) (1) an opinion of the City Attorney to the effect that on the payment of such item, the City will have title in fee simple to, or perpetual easements or title or rights sufficient for the needs and purposes of the City in, such land, free from all liens, encumbrances and defects of title that would have a materially adverse effect on the City's right to use such land or property for the purposes intended or if such liens, encumbrances or defects of title exist, that the City is adequately guarded against the same by a bond or other form of indemnity; or (2) if such payment is for an option or contract to purchase, a quit-claim deed or a lease or a release of, or the acquisition of a right or interest in, land less than a fee simple or a perpetual easement, or if such payment is a partial payment for any such purpose, a Certificate of a City Representative approving the acquisition of such lesser right or interest or of such part payment.

Section 5.7. **Investments.** The Trustee will invest moneys held in the Debt Service Fund, the Construction Fund, and the Reserve Fund, at the written direction of the City, in Investment Securities. The City will invest all Funds and Accounts held by it pursuant hereto in such Investment Securities as it determines in its sole discretion. The proceeds of any remarketing of a Series of the Bonds will be held uninvested or will be invested in Federal Securities maturing not later than the earlier of 30 days or the date needed for payment. The City will invest, and as to the Debt Service Fund, the Construction Fund and the Reserve Fund, will direct the Trustee (in writing or orally with subsequent confirmation in

writing) to invest all moneys held hereunder pursuant to the investment instructions as provided in connection with a Series of Bonds.

Whenever the Trustee has not received written direction from the City and moneys in a Fund or Account created under this Bond Order or a Series Resolution are therefore uninvested, the Trustee is hereby directed to invest the moneys in Federal Securities maturing the earlier of (1) the date such moneys are needed to meet an obligation under this Bond Order or a Series Resolution or (2) 30 days after such investment.

Unless otherwise provided in a Series Resolution, the Trustee will deposit earnings from investment of (1) money in the Construction Fund immediately on receipt thereof into the Construction Fund, (2) in the Debt Service Fund, immediately on receipt thereof into the Debt Service Fund, and (3) in the Reserve Fund, as set forth in each Series Resolution. All other earnings from the investment of moneys held in any other Fund or Account hereunder will be credited to the Operating Fund.

The Trustee is not responsible for any loss on the investment of moneys invested in accordance with this Bond Order.

Section 5.8. ***Valuation and Sale of Investments.***

(e) In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein will be valued at the market value on the last day of each Fiscal Year unless an earlier date is required in this Bond Order or in a Series Resolution. The Trustee shall value each Account of the Reserve Fund separately for purposes of determining if the Account is in the amount required by the Series Resolution under which it was created.

(f) Except as otherwise provided herein, the Trustee shall sell, or present for redemption, any Investment Security whenever it shall be required in writing by a City Representative to do so, on which written instruction the Trustee may rely, or whenever it is necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by it, and the City Representative shall sell, or present for redemption, any Investment Security whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund or Account held by the City. An Investment Security may be credited on a *pro rata* basis to more than one Fund or Account and need not be sold in order to provide for the transfer of amounts from one Fund or Account to another.

[END OF ARTICLE V]

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 ***Payment of Bonds.*** The City will duly and punctually pay or cause to be paid, as herein provided, the Principal of and the Interest on every Bond or the Redemption Price thereof, at the dates and places and in the manner stated in the Bonds, according to the true intent and meaning thereof and will duly and punctually pay or cause to be paid all Sinking Fund Payments, if any, becoming payable with respect to any of the Bonds and all other payments of Interest required under this Bond Order.

Section 6.2 ***Power To Issue Bonds and Pledge.*** The City is duly authorized under the Act to authorize and issue the Bonds and to enter into, execute and deliver this Bond Order and to pledge the Net Revenues, purported to be pledged hereby in the manner and to the extent herein provided. The Bonds and the provisions of this Bond Order are and will be the valid and legally enforceable obligations of the City in accordance with the terms of the Bonds and of this Bond Order. The City will at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Revenues and all the rights of the Owners under this Bond Order against all claims and demands of all persons whomsoever.

Section 6.3 ***Further Assurance.*** At any and all times the City will, so far as it may be authorized by law, pass, make, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, pledging and confirming the Net Revenues.

Section 6.4 ***Accounts and Reports.***

(a) The City will keep, or cause to be kept, proper books of record and account in which complete and accurate entries will be made relating to the Utility System, which will at all reasonable times be subject to the inspection of the Trustee and the Owners or their representatives duly authorized in writing.

(b) The City will file with the LGC, within 180 days after the close of each Fiscal Year, a copy of an audited annual financial report as to the obligations and activities of the Utility System during such Fiscal Year. The financial statements for each Fiscal Year, shall set forth in reasonable detail:

- (1) a balance sheet for the Utility System at the end of such Fiscal Year;
- (2) a statement of the Utility System revenues and expenses in accordance with the categories or classifications established by the City for its operating and program purposes and showing the Revenues and Current Expenses during such Fiscal Year; and
- (3) a statement of cash flows of the Utility System as of the end of such Fiscal Year.

In addition, the City will file with the LGC an audited calculation demonstrating its compliance with the Rate Covenant which may be contained (1) in the audited annual financial report or (2) in a separate document that has been certified by the Accountant which prepares such calculation. The contents of the financial statements may vary from that set forth in clauses (1) through (3) if the Accountant certifies that they conform to then existing generally accepted accounting principles. The financial statements must be accompanied by an Accountant's Certificate stating (1) whether the financial statements examined fairly present the financial position of the City, including the Utility System, at the end of the Fiscal Year, (2) whether the results of its operations and the changes in financial position for the period examined are in conformity with generally accepted accounting principles and (3) whether, to its knowledge, an event of

default has occurred under this Bond Order. The City will make a copy of the financial statements available to any Owner of a Bond on written request therefor and at the expense of such Owner.

(c) Within 90 days after the close of each Fiscal Year, the City will file or cause to be filed with the LGC (1) a certificate that no Event of Default under Section 9.1 has occurred or (2) if an Event of Default has occurred, a special report setting forth in reasonable detail the individual balances and receipts and disbursements for each Fund hereunder.

(d) Any financial statements required hereunder may be presented on a consolidated or combined basis with other reports of the City, so long as the information relating to the Utility System is separately identified and only to the extent that such basis of reporting will be consistent with that required under subsection (b) of this Section.

Section 6.5 ***Annual Budgets.***

(a) The City will approve by July 1 of each year an Annual Budget covering the fiscal operations of the Utility System for the Fiscal Year and will file the same with the Trustee. Such budget need not necessarily be the budget prepared by the City for budgeting purposes. The Annual Budget will set forth for such Fiscal Year the estimated Revenues; the Principal and Interest Requirements on the Bonds, the Principal and Interest Requirements on Subordinate Indebtedness, the Principal and Interest Requirements on General Obligation Indebtedness and the Principal and Interest Requirements on Other Indebtedness, due and payable or estimated to become due and payable during such Fiscal Year; estimated Current Expenses; and, unless capital expenditures for the Utility System are included in the City's capital investment plan or similar document, the estimated amounts, if any, to be expended for extension, improvement, enlargement, renewal or replacement of the Utility System, whether begun, continued or to be completed during such Fiscal Year. The City may at any time adopt and file with the Trustee an amended Annual Budget in the manner provided in this Bond Order for the adoption of the Annual Budget. Copies of the Annual Budget as then amended and in effect will be made available during normal business hours in the Trustee's designated corporate trust office for inspection by any Owner. If the City does not approve or adopt an Annual Budget for a Fiscal Year on or before the first day of such Fiscal Year, the Annual Budget for the preceding Fiscal Year will be deemed to have been adopted and be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year has been adopted as above provided.

(b) The City will not expend for Current Expenses in any Fiscal Year sums in excess of the reasonable or necessary amount thereof.

Section 6.6 ***Rate Covenant.*** Before the commencement of each Fiscal Year, the City will fix, establish or maintain or cause to be fixed, established and maintained such rates and charges for the provision of services of the Utility System and revise or cause to be revised the same, as necessary, as will produce (a) Revenues which together with 20% of the Surplus at the end of the preceding Fiscal Year at least equal in such Fiscal Year to the total of (i) the Current Expenses budgeted for such Fiscal Year, as may be amended from time to time, plus (ii) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds to become due during that Fiscal Year plus (iii) 100% of (1.00 times) the Principal and Interest Requirements on General Obligation Indebtedness and Subordinate Indebtedness to become due in such Fiscal Year plus (iv) 100% of (1.00 times) the Principal and Interest Requirements on Other Indebtedness to become due in such Fiscal Year plus (v) 100% of (1.00 times) the amount required to reimburse the provider of a Qualified Reserve Fund Substitute, if any, for any amounts owing hereunder and (b) Revenues at least equal in such Fiscal Year to the total of (i) the Current Expenses budgeted for such Fiscal Year, as may be amended from time to time, plus (ii) 100% of (1.00 times) the Principal and Interest Requirements on the Bonds to become due during that Fiscal Year plus (iii) 100% of (1.00 times) the Principal and Interest Requirements on General Obligation Indebtedness and Subordinate

Indebtedness to become due in such Fiscal Year plus (iv) 100% of (1.00 times) the Principal and Interest Requirements on Other Indebtedness to become due in such Fiscal Year plus (v) 100% of (1.00 times) the amount required to reimburse the provider of a Qualified Reserve Fund Substitute, if any, for any amounts owing hereunder. The City may not render free services; all users, including political subdivisions and public bodies (State or federal) who receive services from the Utility System will pay therefor at the established rates, fees and charges. The rates, fees and charges need not be uniform. On the City's acquisition of an Utility System which constitutes an addition to the Utility System, this Rate Covenant must be satisfied as to the combined Utility System at the time of such acquisition.

If the City fails to satisfy the Rate Covenant set forth above for any Fiscal Year as of the last day of such Fiscal Year (on the basis of actual revenues and expenditures as calculated in the previous paragraph), the City will, as promptly as possible, take all action necessary to increase Revenues and decrease expenses as necessary to satisfy such Rate Covenant in the following Fiscal Year as set forth in this Section 6.6, including promptly retaining a Financial Consultant to make recommendations as to a revision of rates, fees and charges and possible reductions in expenses which will result in satisfying the Rate Covenant in the following Fiscal Year. The City will give written notification to the Trustee and the LGC on retaining a Financial Consultant to make such recommendations and provide a copy of any report of the Financial Consultant, if any, to the Trustee and the LGC.

If the City fails to satisfy the Rate Covenant set forth in this Section 6.6 and the Revenues continue to be insufficient to meet the Rate Covenant by the following Fiscal Year beginning on the July 1 twelve months after the beginning of the Fiscal Year during which the City failed to meet such Rate Covenant, the Trustee may, in its sole discretion and without an Event of Default having occurred and if in the second such year Net Revenues, together with 20% of the Surplus, is less than 110% (1.10 times) Principal and Interest Requirements on the Bonds, take possession of the Operating Fund and administer the application thereof. If the Trustee does so, it may disburse money in the Operating Fund in such manner as it may determine, notwithstanding the provisions of Section 5.3. If the City fails to satisfy the Rate Covenant set forth in this Section 6.6 and the Revenues continue to be insufficient to meet the Rate Covenant by the second Fiscal Year beginning on the July 1 twenty-four months after the beginning of the Fiscal Year during which the City failed to satisfy such Rate Covenant, an Event of Default shall be deemed to have occurred and the Trustee may in its sole discretion take possession of the Operating Fund and administer the application thereof or a majority of the registered Owners of the Bonds may require the Trustee to take possession of the Operating Fund under Section 9.2(c). If the Trustee does so, it may disburse money in the Operating Fund in such manner as it may determine, notwithstanding the provisions of Sections 5.3 and 5.4. The Trustee shall relinquish possession of the Operating Fund only on the delivery of a written Certificate of the Financial Consultant, retained by the City under this Section 6.6 or an Accountant certifying the City's compliance with the Rate Covenant.

The City may have a contract with a user of the Utility System with respect to water or sewer use that requires the City to account separately for the revenues from such contract and for expenses related thereto. At any time such a contract is in force, the City will comply with its covenants hereunder, including the Rate Covenant, in a manner consistent with the requirements of such contract and consistent with the terms of this Bond Order.

Section 6.7 ***Derivative Agreements.*** The City will not enter into a Derivative Agreement without the approval of the LGC or a person designated by the LGC to approve a contract such as a Derivative Agreement. The City may not terminate a Derivative Agreement without the approval of the LGC or a person designated by the LGC to approve a termination of a Derivative Agreement.

Section 6.8 ***Issuance of Additional Bonds.***

(a) The City will not issue any other obligations, except on the conditions and in the manner provided in this Bond Order, payable from the Revenues, having priority to or being on a parity with the lien of the Bonds issued pursuant to this Bond Order, nor voluntarily create or cause to be or suffer to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority to or being on a parity with the lien of the Bonds issued pursuant to this Bond Order.

(b) The City may issue Bonds to refund all or any Principal amount of the Bonds; if, however, the debt service in any Fiscal Year on the Outstanding Bonds remaining Outstanding after the issuance of the refunding Bonds will increase as a result of such refunding or if the maximum annual Principal and Interest Requirements on the Bonds after the issuance of the refunding Bonds exceeds the maximum annual Principal and Interest Requirements on the Bonds before the issuance of the refunding Bonds, then the City must satisfy the requirements in paragraph (e) below.

(c) If the City has issued Bonds, the proceeds of which were used to acquire or construct any portion of the Utility System and such proceeds are insufficient to pay the Costs of Construction, the City may issue a Series of Bonds in an amount equal to (1) the insufficiency, (2) any required deposit to the Reserve Fund with respect to such Series and (3) the Costs of Issuance related thereto. Before the issuance of any Series of Bonds under this paragraph, the City shall deliver to the Trustee a Certificate of a Financial Consultant stating that the proceeds from the Series of Bonds together with other available funds will be sufficient to pay the Costs of Construction of the portion of the Utility System for which such Series of Bonds are being issued.

(d) The City may issue Bonds for all other lawful purposes, including, without limitation, to provide for Costs of Construction, any required deposit to the Reserve Fund and Costs of Issuance with respect to such Series of Bonds.

(e) No Series of Bonds, other than the Bonds described in paragraph (b) and (c) above, will be issued hereunder unless either:

(1) the Net Revenues for the most recent Fiscal Year for which audited financial statements are available, adjusted in the manner hereinafter provided, were at least equal to (a) 120% of (1.20 times) the maximum Principal and Interest Requirements on the Bonds, including the Series of Bonds to be issued, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness in that Fiscal Year, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness in that Fiscal Year and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness in that Fiscal Year; or

(2) (A) the Net Revenues for the most recent Fiscal Year for which audited financial statements are available, as certified by the Finance Officer, were at least equal to (a) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds for such Fiscal Year, excluding the Series of Bonds to be issued, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness in such Fiscal Year, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness in such Fiscal Year and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness in such Fiscal Year; and

(B) the Net Revenues, as projected by a report of a Financial Consultant filed with the Trustee, for the first two Fiscal Years following (I) the date capitalized interest, if any, provided from the proceeds of the proposed Series of Bonds is expended in the

case of the acquisition of assets for or construction of improvements to the Utility System or (II) the date the proposed Series of Bonds is issued in any other case, are at least equal to (a) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds, including the Series of Bonds to be issued, for such Fiscal Years, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness to become due in such Fiscal Years, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness to become due in such Fiscal Years and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness to become due in such Fiscal Years; and

(3) no Event of Default under this Bond Order has occurred and is continuing.

(f) For purposes of calculating Net Revenues in paragraph (e)(1) or paragraph (e)(2)(A), (1) if any rates, fees or charges of the Utility System have been increased since the date of such audited financial statements or will be increased on or before the date the proposed Series of Bonds is issued, the Finance Officer may add to the Net Revenues his estimate of the additional Revenues that would have been included in the calculation of Net Revenues if such rates, fees and charges had been in effect in such Fiscal Year and (2) if users of the Utility System have been added as a result of an acquisition of assets from another provider of water services or as a result of a contract with another governmental unit, the Finance Officer may add to the Net Revenues his estimate of the additional Net Revenues that would have been included in the calculation of Net Revenues if such users had been a part of the Utility System as of the beginning of such Fiscal Year.

Section 6.9 **Construction; Maintenance of Utility System.** The City will complete or cause to be completed the additions, extensions and improvements of the Utility System provided for in this Bond Order in accordance with plans and specifications approved by a Consulting Engineer and in an economical and efficient manner with all practicable dispatch and thereafter will maintain or cause to be maintained the Utility System in good condition and will continuously operate or cause to be operated the same in an efficient manner and at a reasonable cost as a municipal revenue-producing enterprise. The City will also maintain and amend in each Fiscal Year a capital improvement plan for the Utility System extending over a period of not less than the three following Fiscal Years.

Each contractor entering into a construction contract shall be required to furnish a performance bond and a separate labor and material payment bond as required by the laws of the State.

If a material default by a contractor under a construction contract occurs or if a material breach of warranty with respect to any materials, workmanship or performance occurs, the City shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against any such contractor or against each surety of any bond securing the performance of the construction contract.

Section 6.10 **Insurance; Condemnation.** The City will carry or cause to be carried such insurance with a reputable insurance carrier or carriers, such as is maintained or carried by similar municipal systems as the Utility System, including, public liability insurance against loss or damage by any natural disaster, fire, explosion, occupancy or other hazards and risks, and said property loss and damage insurance will at all times be in an amount sufficient to indemnify in amounts sufficient to repair the Utility System for loss, but not less than the aggregate Principal amount of the Bonds Outstanding, to the extent that such insurance is obtainable.

The City will deposit the proceeds of any insurance or condemnation, with respect to the Utility System, in excess of \$1,000,000 in any given Fiscal Year (1) in the Construction Fund, to rebuild or replace the Utility System or portion thereof giving rise to the referenced proceeds or (2) in the Debt Service Fund, to redeem or pay the Principal of the Bonds pursuant to a Series Resolution.

The City may provide for and maintain the insurance required under this Section partially or wholly by means of an adequate self-insurance fund. Reserves for a self insurance fund will be determined by using actuarial principles. Any self-insurance fund must be actuarially sound and will be reviewed annually by an Independent Insurance Consultant.

Section 6.11 ***Adding to or Removing from the System.***

(a) An enterprise within the Utility System may be sold, leased or otherwise disposed of, in whole or in part, to another municipal corporation, public agency, public authority or other public instrumentality in the State authorized by law to own and operate such systems only (1) if there is filed with the Trustee (A) a report prepared by a Financial Consultant satisfactory to the Trustee showing that there is no material adverse effect on the ability of the Utility System to produce Revenues to satisfy the Rate Covenant, (B) written evidence from any rating agency then rating the Bonds that such sale will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category), (C) an opinion of counsel to the City that such disposition has been properly authorized and (D) an opinion of Bond Counsel that such disposition will not adversely affect the federal or state income tax treatment of interest on the Bonds, and (2) for a disposition in whole, if such political subdivision, public agency, public authority or other public instrumentality assumes all of the obligations of the City related to such enterprise under this Bond Order.

(b) Any part of an enterprise within the Utility System constructed on behalf of or with funds provided by another governmental unit may be sold, leased or otherwise disposed of to that governmental unit, if the Trustee receives a certificate from the Financial Consultant which states that the projected Revenues of the Utility System as it will exist after the proposed disposition for each of the two Fiscal Years subsequent to the year in which the disposition is expected to be completed are equal to the sum of the Current Expenses projected for each such Fiscal Year plus 120% of (1.20 times) the Principal and Interest Requirements on the Bonds for such Fiscal Year plus 100% of (1.00 times) the maximum Principal and Interest Requirements on Subordinate Indebtedness plus the maximum Principal and Interest Requirements on General Obligation Indebtedness plus 100% of (1.00 times) the maximum Principal and Interest Requirements for Other Indebtedness due in any Fiscal Year.

(c) Any part of an enterprise within the Utility System may be sold, mortgaged, leased or otherwise disposed of, in whole or in part to a nongovernmental entity only if (1) the net proceeds to be realized will be sufficient, together with other moneys available therefor, to discharge the lien of this Bond Order as described in Article X as to all Series of Bonds or the portion thereof related thereto and such net proceeds are deposited in a separate segregated account for such purpose and (2) the Trustee has received (A) an opinion of counsel to the City that such disposition has been properly authorized and is permitted by the law of the State, (B) an opinion of Bond Counsel to the effect that such disposition will not adversely affect the federal and state income tax treatment of the interest on the Bonds, (C) written evidence from any rating agency then rating the Bonds that such sale will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category) and (D) a certificate from the Finance Officer that the disposition will not materially adversely affect the ability of the City to meet its financial obligations under this Bond Order, including the ability of the City to meet its Rate Covenant.

(d) The City hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the Utility System hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Before any such sale, lease or other disposition of such property, if the amount to be received therefor or the book value of such property is in excess of 1.0% of the total fixed assets of the Utility System net of accumulated depreciation, (1) a City Representative will make a finding in writing determining that such property comprising a part of the Utility System is no longer necessary, useful or profitable in the operation thereof and the Finance Officer will make a finding in writing that the disposition of such property will not materially adversely affect the

ability of the City to meet its financial obligations under this Bond Order, including the ability of the City to meet its Rate Covenant and (2) such findings will be approved by resolution of the City. All proceeds derived from the sale, lease or other disposition of any property comprising a part of the Utility System as provided above, will be deposited in the Operating Fund.

(e) An enterprise may be added to or removed from the Utility System if the Trustee receives (1) a certificate from the Financial Consultant which states that the projected Revenues of the Utility System as it will exist after the proposed addition or removal for each of the two Fiscal Years subsequent to the year in which the addition or removal is expected to be completed are projected to satisfy the requirements of Section 6.6, (2) an opinion of Bond Counsel to the effect that the addition or removal will not adversely affect the federal income tax treatment of the interest on the Bonds and (3) written evidence from any rating agency then rating the Bonds that such addition or removal will not adversely affect its rating then in effect on the Bonds (without regard to gradation within category).

Section 6.12 ***Compliance With Conditions Precedent.*** On the date of issuance of any of the Bonds, all conditions, acts and things required by law or by this Bond Order to exist, to have happened or to have been performed precedent to or in the issuance of such Bonds exist, have happened and have been performed and such Bonds, together with all other indebtedness of the City, are within every debt and other limit prescribed by law.

Section 6.13 ***Liens or Charges.*** The City may create or permit to be created a lien on the Utility System in order to secure the issuance of Other Indebtedness as long as the Finance Officer certifies at the time of the creation of the lien that (1) loss of the property secured by the lien will not materially adversely affect the ability of the City to meet its financial obligations under this Bond Order, including the ability of the City to meet its Rate Covenant and (2) the book value net of accumulated depreciation of all parts of the Utility System subject to a lien securing Other Indebtedness, including property which may be added to the Utility System as a result of issuance of the proposed Other Indebtedness, does not exceed 20% of the total book value of the fixed assets of the Utility System net of accumulated depreciation. The City will not otherwise create or permit to be created any lien or charge on the Utility System. The City will pay or cause to be discharged or make provisions to satisfy and discharge, within 60 days after the same accrues, all claims and demands for labor, materials, supplies or other items which, if unpaid, might by law become a lien on the Utility System or the Revenues on a parity with the lien of the Bonds, except for the liens permitted by this Section. The City need not pay or cause to be discharged or make provision for any lien or charge as long as the validity thereof is being contested in good faith by appropriate legal proceedings.

Section 6.14 ***Covenant to Obtain Permits.*** No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Bond Order and the performance by the City of the transactions contemplated by this Bond Order, except certain approvals and consents relating to certain extensions, additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment for, the Utility System, and if such approvals are required, will be duly obtained.

Section 6.15 ***Waiver of Laws.*** The City will not at any time insist on or plead in any manner whatsoever, or claim or take the benefit or advantage of any stay or extension of law now or at any time hereafter in force which may affect the covenants and agreements contained in this Bond Order or in the Bonds and all benefit or advantage of any such law or laws is hereby expressly waived by the City.

Section 6.16 ***Issuance of Subordinate Indebtedness.*** The City may issue Subordinate Indebtedness if:

(1) the Net Revenues for the most recent Fiscal Year for which audited financial statements are available, adjusted in the manner provided in Section 6.8, were at least equal to (a) 120% of (1.20 times) the maximum Principal and Interest Requirements on the Bonds, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness in that Fiscal Year, including the Subordinate Indebtedness to be issued, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness in that Fiscal Year and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness in that Fiscal Year; or

(2) (A) the Net Revenues for the most recent Fiscal Year for which audited financial statements are available were at least equal to (a) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds for such Fiscal Year, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness in such Fiscal Year, excluding the Subordinate Indebtedness to be issued, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness in such Fiscal Year and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness in such Fiscal Year; and

(B) the Net Revenues, as projected by a report of a Financial Consultant filed with the Trustee, for the first two Fiscal Years following (I) the date capitalized interest, if any, provided from the proceeds of the proposed Subordinate Indebtedness is expended in the case of the acquisition of assets for or construction of improvements to the Utility System or (II) the date the proposed Subordinate Indebtedness is incurred in any other case, are at least equal to (a) 120% of (1.20 times) the Principal and Interest Requirements on the Bonds for such Fiscal Years, (b) 100% of (1.00 times) the Principal and Interest Requirements for Subordinate Indebtedness, including the Subordinate Indebtedness to be issued, to become due in such Fiscal Years, (c) 100% of (1.00 times) the Principal and Interest Requirements for General Obligation Indebtedness to become due in such Fiscal Years and (d) 100% of (1.00 times) the Principal and Interest Requirements for Other Indebtedness to become due in such Fiscal Years; and

(3) no Event of Default under this Bond Order or under the agreement securing the Subordinate Indebtedness has occurred and is continuing.

[END OF ARTICLE VI]

ARTICLE VII SUPPLEMENTAL RESOLUTIONS

Section 7.1 ***Supplemental Resolutions Effective On Filing With the Trustee.*** For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution of the City may be adopted, which, on the filing with the Trustee of a copy thereof certified by a City Representative, will be fully effective in accordance with its terms:

(a) to close this Bond Order against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this Bond Order on, the delivery of Bonds or the issuance of other evidences of indebtedness;

(b) to add to the covenants and agreements of and the limitations and restrictions on the City in this Bond Order other covenants and agreements or limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this Bond Order as theretofore in effect;

(c) to surrender any right, power or privilege reserved to or conferred on the City by the terms of this Bond Order, but only if the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the City contained in this Bond Order;

(d) to confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Bond Order of the Net Revenues or any other revenues or assets;

(e) to modify any of the provisions of this Bond Order in any respect whatsoever, but only if (1) such modification will be, and be expressed to be, effective only after all Bonds Outstanding at the date of the adoption of such Supplemental Resolution cease to be Outstanding and (2) such Supplemental Resolution will be specifically referred to in the text of all Bonds delivered after the date of the adoption of such Supplemental Resolution and of Bonds issued in exchange therefor or in place thereof; or

(f) to provide for the delivery of a Qualified Reserve Fund Substitute, if any;

provided that any changes do not, in the opinion of Bond Counsel, adversely affect the interests of the Owners of the Bonds.

Section 7.2 ***Supplemental Resolutions Effective On Consent of Trustee.***

(a) For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution may be adopted, which, on (1) the filing with the Trustee of a copy thereof certified by a City Representative, and (2) the filing with the Trustee and the City of an instrument in writing, made by the Trustee consenting thereto, will be fully effective in accordance with its terms:

(1) to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in this Bond Order;

(2) to insert such provisions clarifying matters or questions arising under this Bond Order as are necessary or desirable and are not contrary to or inconsistent with this Bond Order as theretofore in effect; or

(3) to effectuate such changes herein which do not adversely affect the interests of the Owners.

(b) Any such Supplemental Resolution may also contain one or more of the purposes specified in Section 7.1 and, in that event, the consent of the Trustee required by this Section will be applicable only to those provisions of such Supplemental Resolution as contain one or more of the purposes set forth in subsection (a) of this Section.

Section 7.3 ***Supplemental Resolutions Effective On Consent of Owners.*** Exclusive of Supplemental Resolutions covered by Sections 7.1 and 7.2, the written consent of the Owners of not less than a majority in aggregate Principal amount of the Bonds Outstanding and the LGC, will be required for the effectiveness of any resolution supplemental hereto; provided, however, that without the consent of the Owners of all the Bonds Outstanding nothing herein contained will permit, or be construed as permitting:

(a) A change in the terms of redemption or maturity of the Principal amount of or the interest on any Outstanding Bond, or a reduction in the Principal amount of or premium payable on any redemption of any outstanding Bond or the rate of interest thereon;

(b) The deprivation of the Owner of any Bond Outstanding of the lien created by this Bond Order (other than as originally permitted hereby);

(c) A privilege or priority of any Bond over any other Bond; or

(d) A reduction in the aggregate Principal amount of the Bonds required for consent to such Supplemental Resolution.

If at any time the City requests the Trustee to consent to a Supplemental Resolution for any of the purposes of this Section, the Trustee will, on being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Resolution to be given by mail to the Owners of the Bonds Outstanding at the address shown on the registration books maintained by the Trustee. Such notice will briefly set forth the nature of the proposed Supplemental Resolution and will state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Owners. If, within 60 days (or such longer period prescribed by the City) following the giving of such notice, the Owners of not less than a majority in aggregate Principal amount of the Bonds Outstanding (and in the case of Supplemental Resolutions involving (a) through (d) above, the Owners of all of the Bonds Outstanding) at the time of the adoption of any such Supplemental Resolution have consented to and approved the adoption thereof as herein provided, no Owner will have any right to object to any of the terms and provisions contained therein, or in the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 7.4 ***General Provisions.***

(a) As a condition to the effectiveness of any Supplemental Resolution, an opinion of Bond Counsel must be delivered to the Trustee stating that such Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of this Bond Order, is authorized or permitted by this Bond Order, is valid and binding on the City, and does not adversely affect the tax treatment of interest on the Bonds.

(b) The Trustee is hereby authorized to accept the delivery of a certified copy of any Supplemental Resolution referred to and permitted or authorized by Section 7.1, 7.2 or 7.3 and to make all further agreements and stipulations which may be therein contained.

(c) No Supplemental Resolution will change or modify any of the rights or obligations of the Trustee without its written consent thereto.

(d) Nothing contained in this Article will affect or limit the right or obligations of the City to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 6.3 or the right or obligation of the City to execute and deliver to the Trustee any instrument which is to be delivered to the Trustee pursuant to this Bond Order.

(e) Nothing contained in this Article will affect or limit the right of the City to enter into Series Resolutions in connection with the issuance of additional Series of Bonds. Any Series Resolution may be amended or supplemented as provided therein.

(f) No Supplemental Resolution may affect the provisions regarding the LGC under this Bond Order without the consent of the LGC or a person designated by the LGC to execute such a consent, and no Supplemental Resolution under Section 7.1(e) will be effective without the consent of the LGC or a person designated by the LGC to execute such a consent.

(g) The City shall deliver to the LGC a copy of any Supplemental Resolution adopted pursuant to this Article.

Section 7.5 ***Exclusion of Bonds.*** Bonds owned or held by or for the account of the City will not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, and the City will not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article. At the time of any consent or other action taken under this Article, the City will furnish to the Trustee a Certificate of a City Representative, on which the Trustee may rely, describing all Bonds so to be excluded.

Section 7.6 ***Notation on Bonds.*** Bonds delivered after the effective date of any action taken as provided in this Article may, and if the Trustee so determines will, bear a notation, by endorsement or otherwise, in a form approved by the City and the Trustee, as to such action. On any transfer or exchange of any Bond Outstanding at such effective date or on demand of the Owner of any Bond Outstanding at such effective date and presentation of such Bond, the Trustee will make suitable notation as to such action on such Bond or on any Bond issued on any such transfer or exchange. If the City or the Trustee will so determine, new Bonds modified to conform to such action in the opinion of the Trustee and the City will be prepared, executed and delivered, and on demand of any Owner will be exchanged, without cost to such Owner, on surrender of such Outstanding Bond.

[END OF ARTICLE VII]

ARTICLE VIII CONCERNING THE FIDUCIARIES

Section 8.1 ***The Trust.*** The Trustee agrees to hold in trust, for the benefit of the Owners, all property conveyed or delivered to it under this Bond Order and all Funds and Accounts and the moneys or Investment Securities held therein.

Section 8.2 ***Responsibility of the Trustee.*** The statements of fact contained herein and in the Bonds will be taken as the statements of the City and the Trustee does not assume any responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Bond Order or of any Bonds or coupons issued hereunder or in respect of the security afforded hereby, and the Trustee will not incur any responsibility in respect thereof. The Trustee will not be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the City. The Trustee will not be under any obligation or duty to perform any act other than an acceleration of the Bonds under Section 9.2(a) which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own moneys, unless properly indemnified. The Trustee will not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

The Trustee is only responsible for duties which are expressly set forth in this Bond Order. No permissive right of the Trustee may be construed as a duty. The Trustee is not liable (1) for any action taken in good faith in accordance with the written direction of a majority of the Owners of the Bonds or (2) for any debts contracted for or for damages to persons or to property injured or damaged, or for salaries or nonfulfillment of contracts relating to the Utility System. The Trustee is not obligated to effect or maintain insurance or to inquire as to or ascertain the existence or sufficiency of insurance (including the adequacy of any self-insurance fund) or file claims for any loss with respect to the Utility System. The Trustee is not obligated to inquire as to or ascertain whether any contractor has furnished performance, labor and/or material bonds as required by Section 6.9. The Trustee has no duty (1) to inspect or oversee construction or completion of improvements to the Utility System, (2) to verify the truthfulness or accuracy of the certifications made by the City with respect to the Trustee's disbursements for Costs of Construction in accordance with this Bond Order or (3) to examine or review the contents of any disclosure document.

The Trustee shall not be liable for any loss resulting from any investment made in accordance with this Bond Order. Except for the events described in Section 9.1(a) and (b), the Trustee shall not be deemed to have, or required to take, notice of any event of default unless specifically notified in writing thereof by the holders of not less than 25% of the aggregate principal amount of the Bonds.

Section 8.3 ***Evidence on Which Trustee May Act.*** The Trustee will be protected in acting on any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document reasonably believed by it to be genuine, and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel to the City, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. Whenever the Trustee deems it necessary or desirable that a matter be proved or established before taking or suffering any action hereunder, including payment of moneys out of any Fund or Account, such matter (unless other evidence in respect thereof is specifically prescribed herein) may be deemed to be conclusively proved and established by a Certificate signed by a City Representative, and such Certificate will be full warrant for any action taken or suffered in good faith thereon, but in its sole discretion the Trustee may in lieu thereon accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable. Neither the Trustee nor any successor Trustee will be liable to the City, the

Owners of any of the Bonds or any other person for any act or omission done or omitted to be done by the Trustee in reliance on any instruction, direction or certification received by the Trustee pursuant to this Bond Order or for any act or omission done or omitted in good faith and without willful or reckless misconduct. Except as otherwise expressly provided herein, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee will be sufficiently executed if executed in the name of the City by a City Representative.

Section 8.4 ***Compensation; Indemnification.*** The City will pay to the Trustee from time to time reasonable compensation for all services rendered under this Bond Order, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Bond Order, and, except as otherwise provided in a Series Resolution, the Trustee will have a lien therefor on any and all Funds at any time held by it under this Bond Order. To the extent allowed by law, the City further agrees to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or willful misconduct.

Section 8.5 ***Permitted Acts and Functions.*** The Trustee may become the Owner of any Bonds, with the same rights it would have if it were not the Trustee. The Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Bond Order, whether or not any such committee represents the Owners of a majority in aggregate Principal amount of the Bonds Outstanding. The Trustee may be an underwriter in connection with the sale of the Bonds or of any other securities offered or issued by the City. The Trustee may not serve as the provider of any financial guaranty instrument under this Bond Order or any Series Resolution.

Section 8.6 ***Resignation of Trustee.*** The Trustee may at any time resign and be discharged of the duties and obligations created by this Bond Order by giving not less than 60 days' written notice to the City and such resignation will take effect on the appointment of a successor Trustee as provided in Section 8.8.

Section 8.7 ***Removal of Trustee.***

(a) The Trustee may be removed by the City if at any time so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the City and signed by the Owners of a majority in aggregate Principal amount of the Bonds Outstanding or their duly authorized attorney, excluding any Bonds held by or for the account of the City.

(b) The City may, subject to the approval of the LGC or a person designated by the LGC to give such an approval, remove the Trustee at any time, except during the existence of an Event of Default, for such cause as is determined in its sole discretion, by filing with the Trustee an instrument signed by a City Representative.

(c) The Trustee will automatically be deemed removed if it becomes incapable of acting, or is adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee or of its property is appointed, or if any public officer takes charge or control of the Trustee or of its property or affairs.

No removal of the Trustee pursuant to this Section will be effective until the appointment of a successor Trustee as provided in Section 8.8.

Section 8.8 ***Appointment of Successor Trustee.***

(a) If the Trustee resigns or is removed, the City covenants and agrees that it will then appoint a successor Trustee.

(b) If no appointment of a successor Trustee is made pursuant to subsection (a) of this Section within 60 days after (1) the Trustee has given to the City written notice as provided in Section 8.6, (2) the Trustee has been removed as provided in subsection (a) or (b) of Section 8.7 or (3) the events described in subsection (c) of Section 8.7 have occurred, the Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee.

(c) Any successor Trustee appointed under the provisions of this Section must be a trust company, bank or national banking association having the powers of a trust company within or outside the State, having capital, surplus and undivided profits aggregating at least \$100,000,000 if there be such a trust company, bank or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed on it by this Bond Order.

Section 8.9 ***Transfer of Rights and Property to Successor Trustee.*** Any successor Trustee appointed under this Bond Order will execute, acknowledge and deliver to its predecessor Trustee, and also to the City, an instrument accepting such appointment, and such successor Trustee, without any further act, deed or conveyance, will then become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee. The Trustee ceasing to act will nevertheless, on the request of the City or of its successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Bond Order, and will pay over, assign and deliver to its successor Trustee at the City's expense. Should any deed, conveyance or instrument in writing from the City be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing will, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the City at the City's expense. On the effectiveness of the resignation or removal of the Trustee, such Trustee's authority to act pursuant to this Bond Order will terminate and such Trustee will have no further responsibility or liability whatsoever for performance of this Bond Order as Trustee, except for an act or omission occurring before the effective date of the resignation or removal.

Section 8.10 ***Merger or Consolidation.*** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it is a party or any company to which the Trustee sells or transfers all or substantially all of its corporate trust business, provided such company is a trust company or bank which is qualified to be a successor to the Trustee under Section 8.8 and is authorized by law to perform all the duties imposed on it by this Bond Order, will be the successor to the Trustee without the execution or filing of any paper or the performance of any further act, anything herein to the contrary notwithstanding.

Section 8.11 ***Appointment of Paying Agent.*** Unless a different or additional Paying Agent is appointed in a Series Resolution with respect to a Series of Bonds, the Trustee will serve as Paying Agent for the Bonds. Any Paying Agent other than the Trustee will designate its principal office to the City and the Trustee and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Trustee and the City. The City will cooperate with the Trustee and any Paying Agent to cause the necessary arrangements to be made and to be thereafter continued whereby funds derived from the sources specified herein will be made available to the Paying Agent for the payment when due of the Bonds.

Section 8.12 **Qualifications of Paying Agent; Resignation; Removal.** Any Paying Agent other than the Trustee must be a commercial bank or trust company, duly organized under the laws of the United States of America or any state or territory thereof, having at the time of appointment a combined capital stock, surplus and undivided profits of at least \$100,000,000 and authorized by law to perform all the duties imposed on it by this Bond Order. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Bond Order by giving at least 60 days notice to the City and the Trustee. Any Paying Agent may be removed at any time at the direction of the City, by an instrument signed by the City and filed with the Paying Agent and the Trustee. Any Paying Agent will automatically be deemed removed if it is dissolved or its property or affairs are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency.

The resignation or removal of any Paying Agent will take effect on the date specified in such instrument or notice unless a successor Paying Agent has been appointed before said date. In the event of the resignation or removal of any Paying Agent, said Paying Agent will pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there is no successor, to the Trustee.

On the resignation or removal of the Paying Agent, the City may appoint a successor Paying Agent, or, if the City fails to appoint a successor Paying Agent within 60 days after such resignation or removal, the Trustee may appoint a successor Paying Agent or the Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Paying Agent. The Trustee will be the Paying Agent for any Series of Bonds with respect to which no Paying Agent is serving in such capacity. The City and the Trustee will incur no liability as a result of any appointment or failure to appoint any Paying Agent except for the appointment of a Paying Agent which does not conform to the requirements of this Section.

Section 8.13 **Several Capacities.** Anything in this Bond Order to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Paying Agent, the provider of a Credit Facility and remarketing agent and in any other combination of such capacities, to the extent permitted by law; provided, however, that the following conditions and requirements shall apply in any case where the same entity simultaneously acts as the Trustee and the provider of the Credit Facility (the "Trustee/Credit Issuer Institution"):

(a) Promptly after and as of June 30 of each year, the Trustee/Credit Issuer Institution shall provide to the LGC the following:

(1) A certification that the procedures and controls the Trustee/Credit Issuer Institution maintains are adequate to manage potential conflicts of interest; and

(2) A current listing of each North Carolina financing in which it is serving in a dual capacity and identifying such capacities.

(b) The Trustee/Credit Issuer Institution must, within 60 days of receiving any sort of notice concerning any litigation pending or threatened against the Trustee/Credit Issuer Institution in its capacity as Trustee, Credit Issuer or both, for any North Carolina financing, provide such notice and related documentation to the LGC. The Credit Issuer also must notify the LGC immediately of any failure to perform or any default in its capacity as Credit Issuer for the Bonds.

In addition to the provisions of Section 8.7 herein regarding removal of the Trustee, the LGC, in its sole discretion and at any time, may remove or require the replacement of the Trustee by giving 30 days written notice to the Trustee, the provider of the Credit Facility and the City; provided, however, that such removal shall not be effective until the appointment of a successor trustee as set forth in Section 8.8.

Section 8.14 ***Appointment of Co-Trustee.*** In case of litigation under this Bond Order or the enforcement hereof on an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, the Trustee may appoint an additional institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Bond Order to be exercised by or vested in or conveyed to the Trustee with respect thereto will be exercisable by and vest in such separate or Co-Trustee, but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee will run to and be enforceable by either of them. The Trustee shall not be liable by reason of any act or omission of any such Co-Trustee.

Should any conveyance or instrument in writing from the City be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, right, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing will, on request, be executed, acknowledged and delivered by the City. In case any separate or Co-Trustee, or a successor to either, dies, becomes incapable of acting, resigns or is removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, will vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

[END OF ARTICLE VIII]

ARTICLE IX DEFAULTS AND REMEDIES

Section 9.1 ***Events of Default.*** If any of the following events occur, it is hereby defined and deemed an “*Event of Default*” under this Bond Order:

(a) A failure to pay the Principal of or premium, if any, on any Bond when the same becomes due and payable, whether at the stated maturity thereof or on proceedings for redemption including sinking fund redemptions;

(b) A failure to pay any installment of interest when the same becomes due and payable;

(c) A failure by the City to observe and perform any covenant, condition, agreement or provision (other than as described in subsections (a) and (b) of this Section) contained in the Bonds or in this Bond Order on the part of the City to be observed or performed, which failure continues for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, has been given to the City by the Trustee, which may give such notice in its discretion and must give such notice at the written request of Owners of not less than 25% of the aggregate Principal amount of the Bonds, unless the Trustee, or the Trustee and Owners of a Principal amount of Bonds not less than the Principal amount of Bonds the Owners of which requested such notice, as the case may be, agrees in writing to an extension of such period prior to its expiration; or

(d) The City (1) becomes insolvent or the subject of insolvency proceedings; (2) is unable, or admits in writing its inability to pay its debts as they mature; (3) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its own property; (4) files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets or requesting similar relief; (5) applies to a court for the appointment of a receiver for it or for the whole or any part of the Utility System; (6) has a receiver or liquidator appointed for it or for the whole or any part of the Utility System (with or without the consent of the City) and such receiver is not discharged within 90 days after his appointment; (7) becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or (8) files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within 60 consecutive days after the same is filed against the City.

Further events which will constitute “*Events of Default*” hereunder may be set forth in a Series Resolution.

Section 9.2 *Remedies on Default.*

(a) On the occurrence and continuance of an Event of Default, the Trustee may, or if required by a majority of the Owners of the Bonds Outstanding, must, declare the Bonds to be immediately due and payable, whereupon they will, without further action, become due and payable, anything in this Bond Order or in the Bonds to the contrary notwithstanding.

(b) The provisions of the preceding paragraph are subject to the condition that if, after the Principal of any of the Bonds has been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due has been obtained or entered as hereinafter provided, the City causes to be deposited with the Trustee a sum sufficient to pay all matured installments of the Principal of and interest on all Bonds which have become due otherwise than by reason of such declaration (with interest on such overdue installments of interest, at the rate per annum borne by the respective Bonds) and

such amount as is sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and all Events of Default hereunder other than nonpayment of the Principal of the Bonds which have become due by said declaration have been remedied, then, in every such case, such Event of Default will be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee will promptly give written notice of such waiver, rescission or annulment to the City and will give notice thereof by Mail to all Owners; but no such waiver, rescission and annulment will extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) On the occurrence and continuance of any Event of Default, the Trustee in its discretion may, and on the written direction of Owners of not less than a majority in aggregate Principal amount of the Bonds Outstanding and receipt of indemnity to its satisfaction, must, in its own name and as the trustee of an express trust:

- (1) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners, and require the City to carry out any agreements with or for the benefit of the Owners and to perform its duties under this Bond Order;
- (2) take custody of the Operating Fund; or
- (3) take whatever action at law or in equity may appear necessary or desirable to enforce its rights against the City.

If the Trustee takes possession of the Operating Fund, the Trustee shall make payments therefrom and shall appoint a Consultant satisfactory to the Trustee with experience in the operation and maintenance of a municipal Utility System to assist the Trustee in evaluating the Annual Budget, the cost of which will be paid from the Operating Fund.

No right or remedy is intended to be exclusive of any other rights or remedies, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any Event of Default has occurred and if requested by the Owners of a majority in aggregate Principal amount of Bonds Outstanding and indemnified as herein provided, the Trustee will be obligated to exercise such one or more of the rights and powers conferred by this Section as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners.

Section 9.3 ***Priority of Payments After Default.***

(a) If, on the happening and continuance of any Event of Default, the funds held by the Trustee are insufficient for the payment of the Principal or Redemption Price then due of and interest then due on the Bonds, such funds (other than funds held for the payment of particular Bonds which have theretofore become due at maturity or by redemption) and any other amounts received or collected by the Trustee acting pursuant to this Bond Order, after making provision for the payment of any expenses necessary in the opinion of the Trustee to protect the interest of the Owners and for the payment of the charges and expenses and liabilities incurred and advances made by the Trustee in the performance of its duties under this Bond Order, will be applied, subject to Section 9.11, as follows:

- (1) Unless the Principal of all of the Bonds has become or has been declared due and payable:

FIRST: To the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amounts available are not sufficient to pay in full any installment, then to the payment thereof ratably, according to the

amounts due on such installment, to the persons entitled thereto, without any discrimination or preference;

SECOND: To the payment to the Persons entitled thereto of the unpaid Principal or Redemption Price of any Bonds which have become due and, if the amounts available are not sufficient to pay in full all the Bonds due, then to the payment thereof ratably, according to the amounts of Principal or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference; and

THIRD: To be held for the payment to the Persons entitled thereto, as the same become due, of the Principal or Redemption Price of and interest on the Bonds which thereafter become due and, if the amounts available are not sufficient to pay in full all the Bonds due on any date, together with such Interest, payment will be made ratably according to the amount of Principal due on such date to the Persons entitled thereto, without any discrimination or preference.

(2) If the Principal of all of the Bonds has become or has been declared due and payable, to the payment of the Principal and interest then due and unpaid on the Bonds without preference or priority of Principal over Interest or of Interest over Principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due collectively for Principal and interest, to the Persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys will be applied by the Trustee at such times, and from time to time, as required by the terms of this Bond Order and otherwise as the Trustee determines in its prudent discretion, having due regard to the amount of moneys available for such application. The setting aside of such moneys in trust for the proper purpose, will constitute proper application by the Trustee, and the Trustee will incur no liability whatsoever to the City, to any Owner or to any other person for any delay in applying such moneys, so long as the Trustee acts with reasonable diligence, having due regard for the circumstances, and ultimately applies the same in accordance with such provisions of this Bond Order. Whenever the Trustee will exercise discretion in applying such moneys, it will fix the date (which must be an Interest Payment Date unless the Trustee deems another date more suitable) on which such application is to be made. The Trustee will not be required to make payment to any Owner unless its Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.4 ***Termination of Proceedings.*** If any proceedings taken by the Trustee on account of any Event of Default have been discontinued or abandoned for any reason, the City, the Trustee and the Owners will be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers, and duties of the Trustee will continue as though no such proceeding had been taken.

Section 9.5 ***Owners' Right to Direct Proceedings.*** Anything in this Bond Order to the contrary notwithstanding, the Owners of a majority in aggregate Principal amount of the Bonds Outstanding will have the right, at any time, to the extent permitted by law, by instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Bond Order, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction may not be otherwise than in accordance with the provisions of this Bond Order. The Trustee will not be required to act on any direction given to it pursuant to this Section until the indemnity described in Section 8.2 is furnished to it by such Owners.

Section 9.6 ***Limitation on Rights of Owners.***

(a) No Owner will have any right to institute any suit, action, mandamus or other proceeding in equity or at law hereunder, for the protection or enforcement of any right under this Bond Order unless such Owner has given to the Trustee written notice of the Event of Default or breach of duty on account of which such suit, action or proceeding is to be taken, and unless the Owners of not less than 25% in aggregate Principal amount of the Bonds Outstanding have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, has accrued, and has afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted under the law or to institute such action, suit or proceeding in its name and unless, also, there has been offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee has refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers under this Bond Order or for any other remedy hereunder or by law. It is understood and intended that no one or more Owners will have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Bond Order, or to enforce any right hereunder or under law with respect to the Bonds or this Bond Order, except in the manner herein provided, and that all proceedings at law or in equity must be instituted, had and maintained in the manner herein provided and for the benefit of all Owners. Nothing contained in this Article will affect or impair the right of any Owner to enforce the payment of the Principal of and interest on its Bonds at the time and place expressed in said Bond.

(b) Each Owner by its acceptance of a Bond will be deemed to have agreed that any court in its discretion may require, in any suit for the enforcement of any right or remedy under this Bond Order or any Series Resolution or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the reasonable costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable pre trial, trial and appellate attorneys' fees, against any party litigant in any such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant. The provisions of this paragraph will not apply to any suit instituted by the Trustee, to any suit instituted by Owners of at least 25% in aggregate Principal amount of the Bonds Outstanding, or to any suit instituted by any Owner for the enforcement of the payment of any Bond on or after the respective due date thereof expressed in such Bond.

Section 9.7 ***Possession of Bonds by Trustee Not Required.*** All rights of action under this Bond Order or under any of the Bonds enforceable by the Trustee may be enforced by it without the possession of any of the Bonds or the production thereof at the trial or other proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee will be brought in its name for the benefit of all the Owners of such Bonds, subject to the provisions of this Bond Order.

Section 9.8 ***Remedies Not Exclusive.*** No remedy herein conferred on or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy will be cumulative and will be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.9 ***No Waiver of Default.*** No delay or omission of the Trustee or of any Owner to exercise any right or power will be construed to be a waiver of any such default or any acquiescence therein and every power and remedy given by this Bond Order to the Trustee and any Owner, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.10 ***Notice of Event of Default.*** The Trustee will give to the Owners and the LGC notice of each Event of Default hereunder known to the Trustee within 90 days after actual knowledge of the occurrence thereof, unless such Event of Default has been remedied or cured before the giving of such

notice; provided that, except in the case of default in the payment of the Principal or Redemption Price of or interest on any of the Bonds, or in the making of any payment required to be made into the Debt Service Fund, notice will be given immediately after its occurrence. Each such notice of an Event of Default will be given by the Trustee by mailing written notice thereof (1) to all Owners appearing on the registration books maintained by the Trustee and (2) to such other persons as is required by law.

Section 9.11 ***Subordination of Claims for Interest.*** No claim for interest appertaining to any of the Bonds which in any way at or after maturity has been transferred or pledged separate and apart from the Bond to which it appertains will, unless accompanied by such Bond, be entitled, in case of an Event of Default hereunder, to any benefit by or from this Bond Order, except after the prior payment in full of the Principal of all of the Bonds then due and of all claims for interest then due not so transferred or pledged.

[END OF ARTICLE IX]

ARTICLE X DEFEASANCE

If the City pays or causes to be paid or is deemed to have paid to the Owner of any Bond the Principal of and interest due and payable, and thereafter to become due and payable on such Bond, or any portion of such Bond in any integral multiple of the authorized denomination thereof, such Bond or portion thereof will cease to be entitled to any lien, benefit or security under this Bond Order. If the City pays or causes to be paid the Principal of, premium, if any, and interest due and payable on all Outstanding Bonds, pays or causes to be paid all other sums payable by the City, including all fees, expenses and other amounts payable to the Trustee and any Paying Agent and all amounts owing to the provider of a Qualified Reserve Fund Substitute, then the right, title and interest of the Trustee in and to the Net Revenues will then cease, terminate and become void.

Any Bond will be deemed to be paid within the meaning of this Article and for all purposes of this Bond Order when:

(a) payment of the Principal and premium, if any, of such Bond plus interest thereon to the due date thereof (whether such due date is by reason of maturity or on redemption as provided herein) either

(i) has been made or caused to be made in accordance with the terms thereof, or

(ii) has been provided for by irrevocably depositing with the Trustee moneys or Federal Securities in trust and irrevocably set aside exclusively for such payment and the Trustee has received (1) verification from an independent certified public accounting firm that the moneys or Federal Securities deposited with the Trustee, together with investment earnings thereon, will be sufficient to pay when due the Principal and premium, if any, of and interest due and to become due on the Bond on and before the redemption date or maturity date thereof and (2) an opinion of Bond Counsel that all conditions precedent to the payment of such Bond has been satisfied and that such actions will not adversely affect the federal or state income tax treatment of interest on the Bonds, and

(b) all necessary and proper fees, compensation and expenses of the Trustee pertaining to the Bonds with respect to which such deposit is made have been paid or the payment thereof provided for to the satisfaction of the Trustee.

At such times as a Bond is deemed to be paid hereunder, as aforesaid, such Bond will no longer be secured by or entitled to the benefits of this Bond Order, except for the purposes of any such payment from such moneys or Federal Securities.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph will be deemed a payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds has been previously given in accordance with the applicable Series Resolution, or if said Bonds are not to be redeemed within the next 35 days, until the City has given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the Owners of such Bonds in accordance with the applicable Series Resolution, that the deposit required by (a)(ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date on which moneys are to be available for the payment of the Principal and premium, if any, of said Bonds plus interest thereon to the due date thereof, or (b) the maturity of such Bonds.

[END OF ARTICLE X]

ARTICLE XI MISCELLANEOUS

Section 11.1 ***Evidence of Signature of Owners and Ownership of Bonds.*** Any request, consent or other instrument which this Bond Order may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and will be signed or executed by such Owners in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Bonds will be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee or the Trustee may nevertheless, in its discretion, require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Owner or its attorney of such instrument may be proved by the bond of any officer authorized to take acknowledgments in the jurisdiction in which he or she purports to act that the person signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The ownership of the Bonds will be proved by the registration books kept under Section 3.3.

Any request or consent of the Owner of any Bond will bind all future Owners of such Bond in respect of any thing done or suffered to be done by the City or the Trustee in accordance therewith.

Section 11.2 ***Parties Interested Herein.*** Nothing in this Bond Order expressed or implied is intended or will be construed to confer on, or to give to any person other than the City, the Trustee and the Owners, any right, remedy or claim under or by reason of this Bond Order or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Bond Order contained by and on behalf of the City or the Trustee will be for the sole and exclusive benefit of the City, the Trustee and the Owners.

Section 11.3 ***Titles, Headings, Captions, Etc.*** The titles, captions and headings of the articles, sections and subdivisions of this Bond Order have been inserted for convenience of reference only and will in no way modify or restrict any of the terms or provisions hereof.

Section 11.4 ***Severability.*** If any provision of this Bond Order is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 11.5 ***Governing Law.*** This Bond Order is governed by and to be construed in accordance with the laws of the State.

Section 11.6 ***Notices.*** All notices, certificates or other communications will be sufficiently given and will be deemed given when delivered or mailed by certified or registered mail, postage prepaid, as follows: if to the City, to the City of Durham, North Carolina, 101 City Hall Plaza, Durham, North Carolina 27701, Attention: Finance Director; if to the LGC, to the North Carolina Local Government Commission, Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603-1385, Attention: Secretary; if to the Trustee, to U.S. Bank National Association, 214 North Tryon Street, Hearst Tower, 27th Floor, Charlotte, North Carolina 28202 Attention: Corporate Trust Services; if any Series of the Bonds are rated by Moody's, then to Moody's Investors Service, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007; and if any Series of the Bonds are rated by S&P, then to

Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc., 55 Water Street, New York, New York 10041. The City and the Trustee, may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.7 ***Payments Due on Holidays.*** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Bond Order, is not a Business Day, such payment may be made or act performed or right exercised on the next day that is a Business Day with the same force and effect as if done on the nominal date provided in this Bond Order.

Section 11.8 ***No Recourse Against Members, Officers or Employees of City or LGC.*** No recourse under, or on, any statement, obligation, covenant, or agreement contained in this Bond Order, or in any Bond hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the City or the LGC or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee, as such, of the City or the LGC, either directly or through the City for the payment for or to, the City or the LGC or any receiver of either of them, or for, or to, any Owner or otherwise, of any sum that may be due and unpaid on any such Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the City or the LGC or any receiver of either of them, or for, or to, any Owner of any sum that may remain due and unpaid on the Bonds hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the execution of this Bond Order and the issuance of the Bonds.